

Remarks

The Office Action mailed October 19, 2006 and made final, and the Advisory Action dated February 9, 2007 have been carefully reviewed and the foregoing amendments have been made in consequence thereof.

Claims 1-31, 36-38 and 40-43 are pending in this application. Claims 1-31, 36-38 and 40-43 stand rejected. Claims 32-35, 39 and 44 have been cancelled.

Applicants and the undersigned wish to express their appreciation to Supervisory Examiner Zeender for the courtesies he extended during a telephone interview that occurred on March 13, 2007. Applicants also appreciate Supervisory Examiner Zeender's willingness to discuss this matter further with Examiner Frenel.

During the interview with Supervisory Examiner Zeender, the Final Office Action dated October 19, 2006 and the Advisory Action dated February 9, 2007 were discussed. Specifically, the undersigned discussed the differences between the present invention and Fritschen et al., U.S. Patent Application Publication 2002/0133376.

More specifically, the undersigned respectfully submitted that Fritschen does not describe, suggest, or even mention prompting the medical provider to enter medical data directly into the medical certification form displayed on the second client system *wherein the medical data includes a recommendation relating to the reason for the Family Medical Leave Act (FMLA) leave request, or entering the medical data including the recommendation relating to the reason for the FMLA leave request directly into the medical certification form by the medical provider via the second client system.* (Emphasis added.)

Rather, Fritschen describes a health care network that facilitates, *review and signing of Durable Medical Equipment (DME) information* by a physician using a physician's computing system. (Emphasis added.)

The undersigned further submitted that, as described in Fritschen, a computer system that merely allows a physician to review and sign Durable Medical Equipment information does not describe or teach prompting a medical provider to enter medical data directly into

the medical certification form displayed on a second client system *wherein the medical data includes a recommendation relating to the reason for the Family Medical Leave Act (FMLA) leave request, or entering the medical data including the recommendation relating to the reason for the FMLA leave request directly into the medical certification form by the medical provider via the second client system.* (Emphasis added.)

Moreover, the undersigned submitted that none of Grimse, Meyer, Kweiler, or Kahn, alone or in combination, make up for the deficiencies of Fritschen.

Although no agreement was reached with respect to the patentability of the claims in the present case, the Examiner indicated that, if Applicants filed the present Amendment, the Examiners would fully consider the arguments submitted herewith. If there are any questions relating to this Amendment, please feel free to contact the undersigned to discuss.

The foregoing Amendment has been made in consequence of the Examiner Interview.

The rejection of Claims 1-31, 36-38 and 40-43 under 35 U.S.C. § 103(a) as being unpatentable over Grimse et al. (U.S. Patent No. 6,269,355) ("Grimse"); Gary Meyer, "Computer-guided FMLA Administration", HR Magazine, May 1997 ("Meyer"); and Deborah Kweiler, Absence-Mgr.com Upgraded to Account for Family Medical Leave Act Requirements, Business Wire, Feb. 16, 2000 ("Kweiler"), in view of Kahn et al. (U.S. Patent No. 6,401,079) ("Kahn") and further in view of Fritschen et al. (U.S. Pub. No. 2002/0133376) ("Fritschen") is respectfully traversed.

Applicants respectfully submit that none of Grimse, Meyer, Kweiler, Kahn or Fritschen, considered alone or in combination, describe or suggest the claimed invention. As discussed below, at least one of the differences between the cited references and the present invention is that none of Grimse, Meyer, Kweiler, Kahn or Fritschen, alone or in combination, describe or suggest a method for processing and tracking requests for leave under the Family Medical Leave Act (FMLA) using a web-based computer system configured with at least one server which includes an employee FMLA database, and a plurality of client systems networked to the at least one server, wherein the method includes displaying on a first client system at least one web page including a FMLA leave request

form, and prompting a requester to enter request data directly into the FMLA leave request form wherein the requester includes at least one of an employee and a representative of the employee, and the request data includes information relating to a reason for a FMLA leave request, a name of the employee and a name of an employer.

Moreover, Applicants respectfully submit that none of Grimse, Meyer, Kweiler, Kahn or Fritschen, considered alone or in combination, describe or suggest a method that includes automatically uploading the FMLA leave request form with the request data from the first client system to the server wherein the server is associated with the employer, determining at the server whether the employee is eligible to receive a conditional approval of the FMLA leave request form, and automatically downloading the conditional approval from the server to the first client system for viewing by the requester.

Furthermore, Applicants respectfully submit that none of Grimse, Meyer, Kweiler, Kahn or Fritschen, considered alone or in combination, describe or suggest a method that includes automatically downloading the conditional approval and a medical certification form to a second client system associated with a medical provider identified by the requester, displaying on the second client system at least one web page including the conditional approval and the medical certification form, prompting the medical provider to enter medical data directly into the medical certification form displayed on the second client system wherein the medical data includes a recommendation relating to the reason for the FMLA leave request, entering the medical data including the recommendation relating to the reason for the FMLA leave request directly into the medical certification form by the medical provider via the second client system, and automatically uploading a completed medical certification form from the second client system to the server for storage in the FMLA database.

Additionally, Applicants respectfully submit that none of Grimse, Meyer, Kweiler, Kahn or Fritschen, considered alone or in combination, describe or suggest a method that includes comparing, at the server, the request data entered by the requester to the medical data entered by the medical provider and determining whether the reason provided by the requester for the FMLA leave request corresponds with the recommendation provided by the

medical provider, and transmitting from the server a final approval or disapproval to the requester at the first client system after performing the data comparison at the server.

The Office Action asserts at page 3 that “Fritschen suggests the method having ‘entering the medical data directly into the medical certification form by the medical provider via the second client system’, ‘entered by the requester’ and ‘entered by the medical provider’ (See Fritschen Page 1, Paragraphs 0008-0009).” Applicants traverse this assertion. Specifically, paragraphs [0008] and [0009] of Fritschen recite:

[0008] Aspects of the present invention may be found in a healthcare network that *supports the prescription of durable medical equipment (DME)*. The network includes one or more databases that may initially store DME information regarding a patient and a certificate of medical necessity. The network further has a web server that is communicatively coupled to the database(s), and a physician computer that is in turn communicatively coupled to the web server. The computer runs browser software that is used by the physician to *review the DME information and the certificate of medical necessity*. The web server selectively delivers one or web pages to the physician computer that *present the certificate of medical necessity and the DME information for review by the physician*. The physician computer responds to input from the physician by at least initiating approval of the certificate of medical necessity, and communicating an approved certificate of medical necessity to the web server. The web server then stores the approved certificate of medical necessity in the database(s) for future access.

[0009] In one embodiment, the healthcare network also includes a second web server, which may be associated with a DME provider, for example, that *enables the DME provider to subsequently review the DME information and the approved certificate of medical necessity*. Also, the second web server may initially communicate the DME information and the certificate of medical necessity to the first web server. The DME information may be generated by a care provider, such as a nurse, for example, and communicated to the second web server for ultimate communication to the first web server. (Emphasis added)

In addition, paragraph [0017] of Fritschen describes a “health care network 105 that facilitates, *review and signing of DME information* by a physician using a physician’s computing system 110...” (Emphasis added) Fritschen does not describe or suggest a system that enables a physician to enter medical data including a recommendation relating to a reason for an FMLA leave request. Rather, Fritschen and, in particular, paragraphs [0008] and [0009] of Fritschen, describe a system that stores DME information and a certificate of medical necessity, enables a physician to access the DME information and certificate of

medical necessity for review, and enables the physician to approve the certificate of medical necessity by providing an electronic signature or disapprove the certificate of medical necessity. The certificate is then stored in the system, such that a DME provider can access the certificate to fill a prescription for medical equipment.

Notably, Fritschen does not describe, suggest or even mention the Family Medical Leave Act. Accordingly, Fritschen does not describe or suggest a method that includes prompting the medical provider to enter medical data directly into the medical certification form displayed on the second client system wherein *the medical data includes a recommendation relating to the reason for the FMLA leave request, entering the medical data including the recommendation relating to the reason for the FMLA leave request directly into the medical certification form by the medical provider via the second client system, and comparing the request data entered by the requester to the medical data entered by the medical provider and determining whether the reason provided by the requester for the FMLA leave request corresponds with the recommendation provided by the medical provider.* (Emphasis added.)

Moreover, Fritschen does not describe or suggest a system that compares request data entered by a requester to medical data including a recommendation entered by a medical provider, and determines whether a reason provided by a requester corresponds with the recommendation provided by the medical provider. As discussed above, the system described in Fritschen does not enable a physician to enter medical data, rather the physician merely reviews DME information and a certificate of medical necessity and approves the certificate by providing an electronic signature. As such, the DME information is not compared to medical data that includes a physician recommendation. Rather, the certificate of medical necessity is either approved or disapproved based on the DME information.

In addition, Fritschen does not describe or suggest entering request data that includes information relating to a reason for a FMLA leave request, a name of the employee, and a name of an employer. Rather, Fritschen merely describes a system that stores DME information and a certificate of medical necessity. As such, Fritschen does not describe or suggest entering data relating to a reason for a FMLA leave request, a name of the employee, and a name of an employer.

Grimse describes a system and method for guiding a user through a complex process having a plurality of steps. The system permits a user with little or no knowledge of the process to complete the process. The guidance system includes a logical structure which models the process steps within the process and guidance pages which provide the user with additional information about how to proceed through the process. The guidance pages have one or more page fragments and each page fragment is dynamically generated based on certain preconditions so that the guidance pages are easily customizable.

For example, Grimse describes a decision matrix (100) that can be used to help a manager determine when employee leave under the Family Medical Leave Act (FMLA) is justified. In this example, there may be Federal law, State law, company policy and a collective bargaining agreement (shown in rows 101 of the matrix) all of which may influence the decision about whether the employee is entitled to paid leave under the FMLA. A number of columns (102) of the matrix list factors which help to answer the question. The columns may contain the most restrictive factors at the left side of the matrix and the least restrictive factors at the right side of the matrix. The system may ask questions to the user about the employee and then, based on the decision matrix, make the appropriate decision for the user without the user having to understand the applicable laws and the like. The decision matrix guides a user through a process about which the user may have little or no personal knowledge. The decision matrix may also include guidance pages which provide the user with additional information to resolve the problem and complete the process.

Meyer describes a specially designed computer program referred to as FMLA Pro that helps organizations stay in compliance with the many laws and regulations of the Family Medical Leave Act. FMLA Pro is a Windows-based system that automates administration of the FMLA. This software product is a reference source for comprehensive information about the FMLA and enables an employer to process and track employee leave activity covered by the Act.

Kweller is an article that describes a computer system referred to as the Absence Manager, which is an Internet-based system that helps employers track, communicate and manage employee absenteeism. According to the article, the Absence Manager has been updated to include features that enable employers to manage certain employer requirements

under the Family Medical Leave Act (FMLA). For example, the system allows an employee or managers and supervisors to record absences at the time they occur or are reported. According to the article, the Absence Manager is a tool that replaces the commonly found process of supervisors recording absences on desktop calendars or other miscellaneous scraps of paper.

Kahn describes a system that provides an automated, centralized back-end payroll service with a full-featured web-based payroll system. It further describes a feature that allows a user of the system to approve all individual timesheets for the pay period for the employees and contractors in the selected payroll group and to approve all paychecks for the pay period for the employees and contractors in the selected payroll group.

Fritschen describes a health care network that employs digital signatures and/or electronic image signatures for providing authentication, approval support, and security while accessing documents and other information. The electronic image signatures are attached to provide information about the approval, by physicians, of durable medical equipment (DME) related documents and certificates of necessity. Further, the electronic image signatures are used along with digital signatures to authenticate the documents and other information. When a user, such as a doctor, signs a document, an electronic image signature of the user is selectively employed, along with the user's digital signatures that are based on public and private keys, to authenticate the user and determine the identity of the signer. Such a mechanism makes it possible to employ the electronic image signature as proof of the user having signed the document. In addition, when the document is printed or viewed on the screen, the inclusion of the electronic image signature on the display or the insertion of the watermarked electronic image signature in the printed output confirms that the document has been previously signed, while also providing information about the signer's identity.

Applicants respectfully submit that none of Grimse, Meyer, Kweiler, Kahn or Fritschen, considered alone or in combination, describe or suggest the claimed invention. As discussed above, Fritschen does not describe or suggest a system where a physician enters medical data including a recommendation relating to a reason for an FMLA leave request. Applicants respectfully submit that none of Grimse, Meyer, Kweiler, or Kahn, considered alone or in combination, make up for the deficiencies of Fritschen.

Moreover, as discussed above, Fritschen does not describe or suggest a system that compares request data entered by a requester to medical data including a physician recommendation entered by a medical provider, and determines whether a reason provided by a requester for an FMLA leave request corresponds with the recommendation provided by the medical provider. Applicants respectfully submit that none of Grimse, Meyer, Kweiler, or Kahn, considered alone or in combination, make up for the deficiencies of Fritschen.

In addition, as discussed above, Fritschen does not describe or suggest entering request data that includes information relating to a reason for a FMLA leave request, a name of the employee, and a name of an employer. Rather, Fritschen merely describes a system that stores durable medical equipment (DME) information and a certificate of medical necessity. As such, Fritschen never describes or suggests entering data relating to a reason for a FMLA leave request, a name of the employee, and a name of an employer. Applicants respectfully submit that none of Grimse, Meyer, Kweiler, or Kahn, considered alone or in combination, make up for the deficiencies of Fritschen.

Claim 1 recites a method for processing and tracking requests for leave under the Family Medical Leave Act (FMLA) using a web-based computer system configured with at least one server which includes an employee FMLA database, the system including a plurality of client systems networked to the at least one server, wherein the method comprises the steps of: "displaying on a first client system at least one web page including a FMLA leave request form...prompting a requester to enter request data directly into the FMLA leave request form, the requester including at least one of an employee and a representative of the employee, the request data including information relating to a reason for a FMLA leave request, a name of the employee and a name of an employer, wherein the first client system is associated with the requester...automatically uploading the FMLA leave request form with the request data from the first client system to the server, wherein the server is associated with the employer... determining, at the server, whether the employee is eligible to receive a conditional approval of the FMLA leave request form...automatically downloading the conditional approval from the server to the first client system for viewing by the requester...automatically downloading the conditional approval and a medical certification form to a second client system associated with a medical provider identified by the

requester...displaying on the second client system at least one web page including the conditional approval and the medical certification form...prompting the medical provider to enter medical data directly into the medical certification form displayed on the second client system, the medical data including a recommendation relating to the reason for the FMLA leave request...entering the medical data including the recommendation relating to the reason for the FMLA leave request directly into the medical certification form by the medical provider via the second client system...automatically uploading a completed medical certification form from the second client system to the server for storage in the FMLA database...comparing, at the server, the request data entered by the requester to the medical data entered by the medical provider, and determining whether the reason provided by the requester for the FMLA leave request corresponds with the recommendation provided by the medical provider...transmitting from the server a final approval or disapproval to the requester at the first client system after performing the data comparison at the server.”

None of Grimse, Meyer, Kweiler, Kahn, or Fritschen, considered alone or in combination, describe or suggest the method recited in Claim 1. More specifically, none of Grimse, Meyer, Kweiler, Kahn, or Fritschen, considered alone or in combination, describe or suggest a method for processing and tracking requests for leave under the Family Medical Leave Act (FMLA) using a web-based computer system configured with at least one server which includes an employee FMLA database, and a plurality of client systems networked to the at least one server, wherein the method includes entering medical data including a recommendation relating to a reason for an FMLA leave request directly into a medical certification form by a medical provider via a second client system.

As discussed above, Fritschen does not describe or suggest a system where a physician enters medical data including a recommendation relating to a reason for an FMLA leave request. Rather, Fritschen merely describes a system that enables a physician to review and electronically sign a certificate of medical necessity.

Moreover, as discussed above, Fritschen does not describe or suggest a system that compares request data entered by a requester to medical data including a physician recommendation entered by a medical provider, and determines whether a reason provided by a requester for an FMLA leave request corresponds with the recommendation provided by the

medical provider. Rather, Fritschen does not describe entering medical data and, therefore, cannot describe comparing the medical data to request data.

In addition, as discussed above Fritschen does not describe or suggest entering request data that includes information relating to a reason for a FMLA leave request, a name of the employee, and a name of an employer. Rather, Fritschen merely describes a system that stores durable medical equipment (DME) information and a certificate of medical necessity. As such, Fritschen never describes or suggests entering data relating to a reason for a FMLA leave request, a name of the employee, and a name of an employer.

Applicants submit that none of Grimse, Meyer, Kweiler, or Kahn, considered alone or in combination, make up for the deficiencies of Fritschen. Specifically, Grimse describes an automated process guidance system and method that utilizes a logical structure for modeling the process steps within the process and guidance pages which provide the user with additional information about how to proceed through the process; Meyer describes a Windows-based computer program referred to as FMLA Pro that helps organizations stay in compliance with the Family Medical Leave Act by providing a reference source for information about the FMLA, and enabling an employer to process and track employee leave activity covered by the Act; Kweiler describes an Internet-based system referred to as the Absence Manager that enables an employee or managers and supervisors to record absences at the time they occur or are reported as required by the Family Medical Leave Act (FMLA); and Kahn describes a system that provides an automated, centralized back-end payroll service with a full-featured web-based payroll system.

Accordingly, Applicants respectfully submit that Claim 1 is patentable over Grimse, Meyer, and Kweiler in view of Kahn and further in view of Fritschen.

Claims 2-12 depend, directly or indirectly, from independent Claim 1. When the recitations of Claims 2-12 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-12 likewise are patentable over Grimse, Meyer, and Kweiler in view of Kahn and further in view of Fritschen.

Claim 13 recites a system for facilitating processing and tracking of requests under the Family Medical Leave Act (FMLA), wherein the system comprises “a first computer associated with a requester, the requester including at least one of an employee and a representative of the employee...a second computer associated with a medical provider identified by the requester...a server associated with an employer further comprising...an employee FMLA request database...a plurality of FMLA forms designed to accept data relating to a request for a leave under the FMLA...a network connecting said server to said computers, said server configured to...display on the first computer the plurality of said forms including a FMLA leave request form...prompt the requester to enter request data directly into the FMLA leave request form including information relating to a reason for a FMLA leave request, a name of the employee and a name of the employer...receive the FMLA leave request form with the leave data from the first computer...determine whether the employee is eligible to receive a conditional approval of the FMLA leave request form...automatically download the conditional approval to the first computer for viewing by the requester...automatically download the conditional approval and a medical certification form to the second computer...display on the second computer the conditional approval and the medical certification form...prompt the medical provider to enter medical data directly into the medical certification form displayed on the second computer, the medical data including a recommendation relating to the reason for the FMLA leave request... receive a completed medical certification form containing medical data including the recommendation relating to the reason for the FMLA leave request directly entered into the medical certification form by the medical provider from the second computer for storage in the FMLA database...compare the request data entered by the requester to the medical data entered by the medical provider to determine whether the reason provided by the requester for the FMLA leave request corresponds with the recommendation provided by the medical provider...transmit a final approval or disapproval to the requester at the first computer after performing the data comparison.”

Claim 13, as herein amended, recites a system for facilitating processing and tracking of requests under the Family Medical Leave Act (FMLA), wherein the system comprises a server configured to perform steps essentially similar to those recited in Claim 1. Thus, it is submitted that Claim 13 is patentable over Grimse, Meyer, and Kwellner in view of Kahn and

further in view of Fritschen for reasons that correspond to those given with respect to Claim 1.

Accordingly, Applicants respectfully submit that Claim 13 is patentable over Grimse, Meyer, and Kweller in view of Kahn and further in view of Fritschen.

Claims 14-31 depend, directly or indirectly, from independent Claim 13. When the recitations of Claims 14-31 are considered in combination with the recitations of Claim 13, Applicants submit that dependent Claims 14-31 likewise are patentable over Grimse, Meyer, and Kweller in view of Kahn and further in view of Fritschen.

Claim 36 recites an apparatus for processing and tracking of requests under the Family Medical Leave Act (FMLA), wherein the apparatus comprises “means for storing a plurality of FMLA forms...means for displaying on a first client system at least one FMLA form including a FMLA leave request form...means for prompting a requester to enter request data directly into the FMLA leave request form, the requester including at least one of an employee and a representative of the employee, the request data including information relating to a reason for a FMLA leave request, a name of the employee and a name of an employer, wherein the first client system is associated with the requester...means for automatically uploading the FMLA leave request form with the request data from the first client system to a server, wherein the server is associated with the employer...means for determining whether the employee is eligible to receive a conditional approval of the FMLA leave request form...means for automatically downloading the conditional approval from the server to the first client system...means for automatically downloading the conditional approval and a medical certification form to a second client system associated with a medical provider identified by the requester...means for displaying on the second client system the conditional approval and the medical certification form...means for prompting the medical provider to enter medical data directly into the medical certification form displayed on the second client system, the medical data including a recommendation relating to the reason for the FMLA leave request...means for entering the medical data including the recommendation relating to the reason for the FMLA leave request directly into the medical certification form by the medical provider via the second client system...means for automatically uploading a completed medical certification form from the second client system to the server for

storage...means for comparing at the server the request data entered by the requester to the medical data entered by the medical provider to determine whether the reason provided by the requester for the FMLA leave request corresponds with the recommendation provided by the medical provider...means for transmitting from the server a final approval or disapproval to the requester at the first client system after performing the data comparison at the server.”

Claim 36, as herein amended, recites an apparatus for processing and tracking of requests under the Family Medical Leave Act (FMLA), wherein the apparatus includes means for performing steps essentially similar to those recited in Claim 1. Thus, it is submitted that Claim 36 is patentable over Grimse, Meyer, and Kweller in view of Kahn and further in view of Fritschen for reasons that correspond to those given with respect to Claim 1.

Accordingly, Applicants respectfully submit that Claim 36 is patentable over Grimse, Meyer, and Kweller in view of Kahn and further in view of Fritschen.

Claims 37 and 38 depend, directly or indirectly, from independent Claim 36. When the recitations of Claims 37 and 38 are considered in combination with the recitations of Claim 36, Applicants submit that dependent Claims 37 and 38 likewise are patentable over Grimse, Meyer, and Kweller in view of Kahn and further in view of Fritschen.

Claim 40 recites a computer program embodied on a computer readable medium for processing and tracking requests for leave under the Family Medical Leave Act (FMLA), said program comprising a code segment that “displays on a first client system at least one web page including a FMLA leave request form...prompts a requester to enter request data directly into the FMLA leave request form, the requester including at least one of an employee and a representative of the employee, the request data including information relating to a reason for a FMLA leave request, a name of the employee and a name of an employer, wherein the first client system is associated with the requester...automatically uploads the FMLA leave request form with the request data from the first client system to the server, wherein the server is associated with the employer...determines at the server whether the employee is eligible to receive a conditional approval of the FMLA leave request form...automatically downloads the conditional approval from the server to the first client

system for viewing by the requester...automatically downloads the conditional approval and a medical certification form to a second client system associated with a medical provider identified by the requester...display on the second client system at least one web page including the conditional approval and the medical certification form...prompts the medical provider to enter medical data directly into the medical certification form displayed on the second client system, the medical data including a recommendation relating to the reason for the FMLA leave request...receives the medical data including the recommendation relating to the reason for the FMLA leave request entered directly into the medical certification form by the medical provider via the second client system...automatically uploads a completed medical certification form from the second client system to the server for storage in the FMLA database...compares at the server the request data entered by the requester to the medical data entered by the medical provider to determine whether the reason provided by the requester for the FMLA leave request corresponds with the recommendation provided by the medical provider...transmits from the server a final approval or disapproval to the requester at the first client system after performing the data comparison at the server.”

Claim 40, as herein amended, recites a computer program programmed to perform steps essentially similar to those recited in Claim 1. Thus, it is submitted that Claim 40 is patentable over the combination of Grimse, Meyer, and Kweiler in view of Kahn and further in view of Fritschen for reasons that correspond to those given with respect to Claim 1.

Accordingly, Applicants respectfully submit that Claim 40 is patentable over Grimse, Meyer, and Kweiler in view of Kahn and further in view of Fritschen.

Claims 41-43 depend, directly or indirectly, from independent Claim 40. When the recitations of Claims 41-43 are considered in combination with the recitations of Claim 40, Applicants submit that dependent Claims 41-43 likewise are patentable over Grimse, Meyer, and Kweiler in view of Kahn and further in view of Fritschen.

Moreover, Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. None of Grimse,

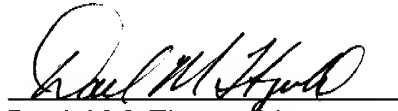
Meyer, Kweiler, Kahn, or Fritschen considered alone or in combination, describe or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine any of Grimse, Meyer, Kweiler, Kahn, and Fritschen because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for these reasons, along with the reasons given above, Applicants request that the Section 103 rejection Claims 1-31, 36-38, and 40-43 be withdrawn.

In view of the foregoing amendments and remarks, all the Claims now active in the application are believed to be in condition for allowance. Favorable action is respectfully solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Daniel M. Fitzgerald", is written over a horizontal line.

Daniel M. Fitzgerald
Reg. No. 38,880
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070